

**ANNUAL REPORT  
OF THE  
COUNTY GOVERNMENT  
STUDY COMMISSION**



**Indiana Legislative Services Agency  
200 W. Washington St., Suite 301  
Indianapolis, Indiana 46204-2789**

**November, 2003**

# **INDIANA LEGISLATIVE COUNCIL**

## **2003**

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# **County Government Study Commission**

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### **Legislative Services Agency Staff**

**Robert Sigalow, Fiscal Analyst  
Ken Roney, Attorney**

**November, 2003**

## INFORMATION REPORT

### **County Government Study Commission**

#### **I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES**

The Indiana General Assembly enacted legislation [P.L. 109 -1997 amended by P.L. 28-2001 (HEA 1629-2001)] directing the Commission to study the following:

(1) How to improve the effectiveness and efficiency of county government by examining the functions and duties associated with all elected county officials and departments of county government. The Commission shall focus on how these functions and duties relate to the functions and duties of other elected county officials, departments of county government, and other state and local governmental entities.

(2) The functions and duties of elected county officials and departments of county government that should be more clearly defined by statute to avoid disputes over allocation of power of county government.

(3) The functions and duties of elected county officials and departments of county government that should be eliminated, altered, or reassigned to other elected county officials, departments of county government, or other state or local governmental entities.

The Legislative Council assigned the following additional responsibility to the Commission:

Examination of cemetery law issues (Pioneer Cemeteries).

#### **II. SUMMARY OF WORK PROGRAM**

The Commission met four times during the 2003 interim.

At the first meeting, July 31, 2003, the Commission discussed and heard testimony on the following items:

- (1) Septic System Rules.
- (2) Pioneer Cemeteries.

At the second meeting, September 3, 2003, the Commission discussed and heard testimony on the following item:

- (1) Septic System Rules.

At the third meeting, October 9, 2003, the Commission discussed and heard testimony on the following items:

- (1) Septic System Rules.
- (2) Pioneer Cemeteries.

At the fourth and final meeting, October 28, 2003, the Commission discussed and heard testimony on the following items:

- (1) Septic System Rules.
- (2) C.O.M.P.E.T.E. Report.

### **III. SUMMARY OF TESTIMONY**

The Commission heard testimony on the following topics:

- 1) Septic System Rules.
- 2) Pioneer Cemeteries.
- 3) C.O.M.P.E.T.E. report.

This summary divides the testimony into the three topics listed above and presents highlights of the testimony offered during Commission meetings. The stating of a policy position or recommendation in this summary of the testimony does not signify either Commission support or disapproval of the matter. The narrative merely reflects a variety of ideas and positions presented to the Commission by persons addressing the Commission.

#### **1) Septic System Rules.**

Several state and local officials and representatives of the Association of Indiana Counties (AIC), Indiana Statewide Association of Rural Electric Cooperatives, Indiana Builders Association (IBA), Indiana Association of Realtors, Indiana Manufactured Housing Association, Purdue University, and Sierra Club testified on the effects of the currently proposed administrative rule regarding septic systems (*410 IAC 6-8.2; LSA Document #02-321*). This proposed rule would regulate the maximum permissible level of nitrate as a groundwater contaminant.

Mr. Howard Cundiff, State Department of Health, provided a background on the development of a new rule to replace the 10- to 15-year-old current septic system rule. He said the new sewage rule proposal had taken approximately four to five years to create. He mentioned the State Groundwater Protection Act as a reason for the adoption of the rules. He also stated a preference for a single uniform rule to be established.

Mr. Cundiff indicated that the proposed rule was lengthy with technical details and that he would like to see the digest of the proposed rule separated from the technical details. He mentioned that currently residential sewage permits are typically issued by the local county health department, while commercial permits are generally issued by the state with some local issue.

Mr. Cundiff stated that ten years ago the Indiana Department of Environmental Management (IDEM) adopted federal drinking water standards for nitrates. He spoke on the causality of “Blue Baby” syndrome from excessive nitrates in drinking water, which is hazardous to babies under six months of age and to pregnant women. He stated the federal minimum standard has been ten parts per million since the late 1940s. Mr. Cundiff noted that other states should have adopted similar guidelines to the ten parts per million standard.

Mr. Cundiff also discussed different filtering measures and the additional expense in counties with particularly sandy ground to install and maintain filters in septic systems. The main counties he mentioned where additional expenses tend to apply are Elkhart, St. Joseph, and LaPorte. He stated a preference for recirculating media filters for treatment/removal of nitrates and improvement of effluent, although these filters are expensive.

Mr. Cundiff mentioned SEA 99-2002, which allows for septic maintenance districts (SMD). He discussed that septage disposal can overpower sewage plants and that SMDs can provide a mechanism to pay for a collection device for septage known as “trickling.”

Mr. Cundiff suggested that the Commission consider removing nitrates from the list of contaminants in statute and then void only the nitrate portion of the proposed rule. He added that more is learned on the subject of nitrates all the time. He estimated that the cost of abatement could be cheaper five years from now.

Mr. Steve Boyce, Indiana Builders Association, stated his opposition to the proposed rule with concerns and recommendations for its improvement. He stated that the proposed rule was the third incarnation, and that previous attempts failed due to the lack of technology available to meet standards. Mr. Boyce stressed his organization's concern with the impact that septic system rules could have on housing costs to the public.

Mr. David Kovich, President, Indiana Builders Association, gave a background on the 1990 septic rule currently in place. He stated the current rule works well when enforced. He said that those counties that enforce the rule properly have a fail rate of 3%. He said that, although honorable, the proposed rules would add undue financial strain to local government. He elaborated that current technology is not capable of meeting the proposed standards.

Mr. Kovich added that county health offices would have to hire an additional staff member to help enforce the new rule. He stated the cost would be \$60,000 per new staff member. He also stated that the annual cost to homeowners in the installation of new septic systems complying with the new rule would be \$3.7 M in Elkhart County and \$42 M statewide.

Mr. Kovich mentioned that only 2% of nitrates in groundwater are from septic systems, although there would be additional cost per home for denitrification. He concluded that no other state has set their nitrate standards to the federal ten parts per million standard.

Ms. Sandra Flum, Allen County Commissioners Office, provided a background of the Allen County SMD. She said the SMD went into effect on July 7 and has very strict guidelines. She said that the district is two years into the process of monitoring maintenance for discharging systems. Ms. Flum indicated that currently only new or improved systems are in the district. She said a fee ordinance is currently being adopted for annual inspections and that the fees would be \$50 to \$150 depending on the system type.

Ms. Flum stated that unlike Elkhart, St. Joseph, and LaPorte Counties, Allen County has very dense soil. She suggested regionalization of county health departments with regard to contracting with specialists to help enforce septic rules. She also mentioned the soil study done in Allen County by Purdue University.

Mr. Dax Denton, Association of Indiana Counties, stated the concerns of the Association regarding the fiscal impact counties would experience to hire additional staff to enforce septic rules. He said there would be additional costs to counties to hire professionals to measure septic levels. He said there is currently not enough money to implement changes required by the rule. He mentioned that Allen County Health Department officials have been discussing this issue.

Mr. Glenn Pratt, Sierra Club, testified that the lack of support by IDEM on septic issues is a major problem. He stated that there are about 30,000 failing systems in Marion County. Mr. Pratt said that SMDs should be mandated to be established by a set date. He suggested using population density statistics to determine a timetable as to when counties would be required to establish an SMD.

Mr. Pratt also indicated that Allen County's district only covers septic systems that have not failed. He said that seed money would be useful in establishing septic districts. He indicated that the

system adopted must be easy to comply with. Mr. Pratt mentioned that there are three main components to the problem: sewers, failing septic systems, and urban runoff. He opined that failing septic systems are more crucial than urban runoff. He stated more kids are likely to play in nearby creeks and streams that may have leaking septic systems than play in the White River where sewage and urban runoff problems are prevalent.

Mr. Pratt suggested combining all three problems in an integrated approach. He said failing septic systems are a much more urban problem, and not combining them with sewage and urban runoff into a single solution would be wasteful of resources.

Ms. Ellen Holland, Indiana Association of Realtors, described the added cost to new homes to comply with the proposed septic rule. She stated that the average homeowner would have to earn an additional \$1.50 per hour in order to qualify for a loan to build the same house under the septic rule. Ms. Holland noted that there is insufficient evidence at the local level that the proposed rules are required.

Mr. James Keller, Indiana Manufactured Housing Association, stated the Association's opposition to the proposed rule. He said the proposed rule would have a major impact on the ability of consumers to afford new homes. He stated that the proposed rule has problems, and he said the lack of written standards would make it difficult to enforce. He opined that given the required size of septic systems under the proposed rule and the difference in definition between "sleeping room" and "bedroom", new homes would require additional bedrooms in order to comply.

Mr. Trevor Vance, Indiana Statewide Association of Rural Electric Cooperatives, testified that he was concerned with the cost of the proposed rule. He stated a cost figure of \$20M to \$42M per year that would hamper rural economic development. He suggested that a better rule be written.

Dr. Brad Lee, Asst. Professor and Extension Specialist, and Dr. Don Jones, Professor and Agricultural Extension Engineer, both of Purdue University, testified about nitrate levels in groundwater, septic system rules, and related issues. Their presentation provided scientific and technical information related to the nitrate issue. Dr. Jones stated that research data is not presently available to give a clear answer on many questions that the proposed rules raise.

Mr. Pat Carroll of IDEM told the Commission that IDEM's involvement in this issue is mandated by the groundwater standards established by the Groundwater Protection Act of 1989. Mr. Carroll discussed the underlying statutes, the rule making process, and the standards for groundwater. He informed the Commission that there is no nationwide standard for nitrates in groundwater, but that most states that have established standards have used those established by the federal Environmental Protection Agency for drinking water.

As to groundwater standards, climatic effects, and the impact of septic systems on nitrate levels, Mr. Carroll pointed out that IDEM's activities in this area of regulation are limited by statute, and that location, density, and other factors contribute to the volume of nitrate in an area.

Mr. Terry Hershberger, Chairman of the Indiana Builders Association Septic Subcommittee, detailed the cost and uncertain benefits of technologies required by the proposed rules, the relatively small contribution of septic systems to groundwater nitrate levels when compared to other sources such as agriculture, and the negative impact that the IBA feels the proposed rules will have on economic development.

Mr. Bob Watkins, Manager of Elkhart County Environmental Health Services, presented information to the Commission concerning the administrative processes currently in place for septic systems and wells, and the health and economic effects of the proposed rules at the local government level. Mr. Watkins stated that the new technologies appear to be unreliable. He stated that if the proposed rules were required for health reasons, then older systems undergoing repair should be included. He noted that his and other departments will require significant increases in both personnel and funding to properly administer the proposed rules. Mr. Watkins stated that he opposes the proposed rules.

Mr. Alan Dunn, Supervisor, Indiana Department of Health (DOH), addressed details of the effects of soil types upon nitrate levels in groundwater that were raised by other speakers. He informed the Commission that the DOH is continuing to gather feedback concerning the proposed rules. He stated that DOH is considering a two-year delay on the implementation of rules designed to deal with nitrate levels to allow for the gathering of additional data and the implementation of training. He stressed that the proposed rules will apply to newly installed septic systems, and that there are no plans to extend them to include repairs of existing systems.

Mr. Terry Miller, St. Joseph County Chamber of Commerce, testified that the portion of the proposed rule regarding nitrate levels doesn't solve the problem. He stated that urban sprawl is creating this problem and that long term financing to provide sewers for all subdivisions would be helpful. Mr. Miller said that St. Joseph County has tens of thousands of homes that need to be upgraded from septic systems to sewers. He added that some communities outside of Indiana build roads and sewers before homes are built on the site.

Mr. Zach Cattell, Indiana Department of Health, informed the Commission that a final draft of the proposed septic system rule will be presented to the Department's executive board at the end of the year for final adoption. He stated that the Department intends to delay for an indefinite time implementation of the portion of the proposed rule that requires certain septic system technologies in order to attain groundwater nitrate standards. The delay will allow for improvements in technology. He told the Commission that the Department plans to use public forums in future years to perform cost/benefit analyses prior to implementing any additional rules on this subject. Mr. Cattell stated that the expertise of Purdue University, with additional input from other sources, could be used to perform a cost/benefit analysis.

Ms. Tonya Galbraith of the Indiana Department of Environmental Management informed the Commission that the various agencies and the Governor's office are working together on this issue, and that IDEM agrees with the course proposed by the Department of Health.

## **2) Pioneer Cemeteries.**

Several state and local officials and other interested parties testified on the problems related to the upkeep of and access to pioneer cemeteries.

Ms. Angela Tielking, Henry County Cemetery Commission, proposed changes to the Indiana Code concerning cemeteries. Ms. Tielking said cemeteries require these additional protections:

- (1) County commissioners should be required to appoint a county cemetery commission that has the legal authority to maintain cemeteries.
- (2) Easements for visitation of landlocked cemeteries are needed.
- (3) Cemeteries on private property create access and preservation problems.
- (4) Prairie grass restoration and controlled burning of weeds and grasses should not be performed in cemeteries due to the resulting damage.



Ms. Tielking pointed out the differences between the roles of trustees and county cemetery commissions. She said trustees have several different responsibilities and that some may be indifferent to cemetery issues. She said the county cemetery commissions are designed to focus on the issue and care deeply about their condition.

Ms. Debbie Driskell, Delaware Township of Hamilton County and President of the Indiana Township Association, testified on the cooperative effort between the Association and the Department of Natural Resources (DNR) to provide education to township trustees on pioneer graves. She also observed that improved access and greater enforcement powers would be useful.

Mr. John Walters, Fayette County grave restorer, informed the Commission that tombs of historical importance are in horrible condition throughout the state and that much work is needed. He shared some of his personal experiences of restoring tombstones and other artifacts of grave sites. Mr. Walters said this was a responsibility for the township trustees and it was also a responsibility for families of the deceased.

Ms. Donna Tauber, Henry County Cemetery Commission, testified to the importance of maintaining pioneer graves, particularly for genealogical purposes.

Mr. Dan Mathis, Legislative Liaison, Department of Natural Resources, said the DNR is in the process of compiling an inventory of all cemeteries across the state. He indicated that some burns are performed on cemeteries and that preservation of natural prairie grass is important to consider. He said that controlled burns do less damage to prairie grass than the use of mowers and weed whackers.

Mr. Mathis also said that some of these cemeteries are on state property. He said that it was important to note that in one case the passage to a cemetery is very close to a shooting range. He stressed that before visitors venture down to this particular cemetery, they should contact Mr. Larry Alsop.

Mr. Mathis said that maintenance by DNR of a cemetery on DNR property depends on the history and location of the property.

Mr. Burnell Fischer, State Forester, stated that there are cemeteries that are similar to a cemetery featured in a photograph presented to the Commission by Mrs. Tielking. He said the photograph exhibited an extreme case. He also stated that some cemeteries are surrounded by state property, where the township owns the actual plot of land where the cemetery lies. He stated that in these cases, the state does not maintain the cemeteries, but the township may maintain them.

Mr. John Bacone, DNR, gave the Commission information concerning the DNR's prairie grass restoration projects. Mr. Bacone also provided a limited background on the existence of prairie grass in Indiana before agricultural pursuits began.

Ms. Jeannie Regan-Dinius, Division of Historical Preservation and Archeology, DNR, stated that a tax credit for these cemeteries is allowed under current law, but that no one has claimed it.

Mr. Matt Brooks, Executive Director, Association of Indiana Counties, testified that the Association's historical position is to fight to insure home rule on matters such as the cemetery issue. He recapped the effort to improve capacity to meet the responsibility under the current law. He stated there could be a better avenue to accomplish maintenance on cemeteries than to simply mandate to local officials by changing a "may" provision to a "shall."

Mr. Brooks stated that there are fiscal impacts to this issue. He asked the Commission to consider a solution that would be better tailored to individual counties' fiscal abilities. He mentioned the possibility of assessing a property tax levy to cover the costs involved with maintenance of pioneer graves.

Mr. Brooks also discussed property rights of those owning property around these cemeteries and rights to access. He asked whether the responsibility of allowing access to the cemeteries would be the homeowner's responsibility or the county's.

Mr. Ulysses "Bud" Bush, Indiana Pioneer Cemeteries Restoration Project, New Castle, raised the question of who owns cemeteries on church land. He expressed the problem of township trustees not being able to take over cemeteries on church land without deeds. He asked the Commission what could be done to have a deed created to present to the trustee.

Mr. Eddie Hager testified that he didn't think the proposed language to add to the definition of cemeteries that could be cared for by the county cemetery commission addressed all of the problems with the cemeteries.

### **3) C.O.M.P.E.T.E. Report**

(C.O.M.P.E.T.E. - Coalition On Monitoring Public Efficiency and Tax Expenditures)

Mr. Bottorff, Association of Indiana Counties (AIC), informed the Commission that a joint resolution containing proposed amendments to the Indiana Constitution addressing holdover offices has been approved by the Legislature during the past two sessions and will appear on the ballot at the 2004 general election. This proposal originated as a result of the Commission's work in prior years.

Mr. Bottorff noted that fiscal constraints on local governments have increased since the COMPETE report was completed, and that interlocal cooperation has increased to address this, especially in the area of public safety. He stated that the AIC had concerns on several of the recommendations of the report dealing with tax distributions and taxation for police and sheriffs' services. Mr. Bottorff informed the Commission that there is a need for reorganization of the property tax assessment system and presented various options to the Commission.

Ms. Cheryl Musgrave, Vanderburgh County Assessor, informed the Commission that studies of the assessing system over the past 50 years have consistently recommended increased centralization of the assessing system. She told the members about local problems created by conflicts between county and township assessors and suggested that the resolution of some appeals at the township level was having the effect of reversing recent assessment policies set in place by the Legislature. Ms. Musgrave discussed with the Commission the sources of the problems and conflicts. She stated that a total redesign of the assessment system is warranted.

## **IV. COMMISSION FINDINGS AND RECOMMENDATIONS**

Due to an insufficient number of Commission members in attendance at the final meeting, no votes could be taken on official Commission findings, recommendations, or on the adoption of a final report. This report is an information report only and not an official final report.

The Commission voted 13-0 at the Commission's third meeting to approve draft language of legislation (2004 PioCem.001) that would add to the definition of cemeteries that could be cared for by the county cemetery commission.

## **WITNESS LIST**

David Bottorff, Association of Indiana Counties  
Steve Boyce, Indiana Builders Association  
Matt Brooks, Executive Director, Association of Indiana Counties  
Zach Cattell, Indiana Department of Health  
Pat Carroll, Indiana Department of Environmental Management  
Howard Cundiff, State Department of Health  
Dax Denton, Association of Indiana Counties  
Debbie Driskell, Delaware Township of Hamilton County and President,  
Indiana Township Association  
Alan Dunn, Supervisor, Indiana Department of Health.  
Sandra Flum, Allen County Commissioners Office  
Tonya Galbraith, Indiana Department of Environmental Management  
Eddie Hager  
Terry Hershberger, Chairman of the Indiana Builders Association Septic Subcommittee  
Ellen Holland, Indiana Association of Realtors  
Dr. Don Jones, Professor and Ag. Extension Engineer, Purdue University  
James Keller, Indiana Manufactured Housing Association  
David Kovich, President, Indiana Builders Association  
Dr. Brad Lee, Asst. Professor and Extension Specialist, Purdue University  
Dan Mathis, Legislative Liaison, Department of Natural Resources  
Terry Miller, St. Joseph Co. Chamber of Commerce  
Cheryl Musgrave, County Auditor, Vanderburgh County  
Glenn Pratt, Sierra Club  
Jeannie Regan-Dinius, Division of Historical Preservation and Archeology,  
Department of Natural Resources  
Donna Tauber, Henry County Cemetery Commission  
Angela Tielking, Henry County Cemetery Commission  
Trevor Vance, Indiana Statewide Association of Rural Electric Cooperatives  
John Walters, Fayette County, Grave Restorer  
Bob Watkins, Manager of Elkhart County Environmental Health Services.